## NOTES OF CASES.

**Federal Employers' Liability Act—Evidence—Evidence of Contributory Negligence—Kansas, etc., R. Co. v. Jones (U. S. Sup. Ct.), 36 Sup. Ct. Rep. 513.**—In the principal case the United States Supreme Court held that a ruling by highest court of state that evidence of contributory negligence in action under Employers' Liability Act, as amended by Act April 5, 1910, was properly excluded because not offered for specific purpose of mitigating damages, was error.

In the principal case the court used the following language: "Upon rehearing the supreme court held evidence of contributory negligence, though not pleaded, and inadmissible to defeat a recovery, should have been received in mitigation of damages if offered for that specific purpose. But it said the evidence in question was properly excluded because tendered without restriction.

We have been cited to no authority showing a settled local rule requiring counsel, without inquiry by the court, to announce in advance the purpose for which evidence is tendered. Earlier cases in Louisiana lend support to the contrary and commonly approved practice. Thompson *v.* Chauveau, 6 Mart. N. S. 458, 461; Hitchcock *v.* North, 5 Rob. (La.) 328, 329, 39 Am. Dec. 540; Fortunich *v.* New Orleans, 14 La. Ann. 115; Caspar *v.* Prosdame, 46 La. Ann. 36, 14 So. 317. See McAfee *v.* Crofford, 13 How. 447, 456, 14 L. Ed. 217, 221; Buckstaff *v.* Russell & Co., 151 U. S. 626, 636, 38 L. Ed. 292, 296, 14 Sup. Ct. Rep. 448; Farnshworth *v.* Nevada Co., 42 C. C. A. 509, 102 Fed. 578, 580; Hubbard *v.* Allyn, 200 Mass. 166, 171, 86 N. E. 356; Mighell *v.* Stone, 175 Ill. 261, 262, 51 N. E. 906.

It is declared by the act of Congress upon which the suit is based:—

"Sec. 3. That in all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this act to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. . . ."

Manifestly, under this provision, a defendant carrier has the Federal right to a fair opportunity to show in diminution of damages any negligence attributable to the employee.

The state supreme court upheld the railway company's claim of right to show contributory negligence under its general denial but the trial court emphatically denied this and positively excluded all evidence to that end. As, under the Federal statute, contributory negligence is no bar to recovery, the plain purpose in offering the excluded evidence was to mitigate damages. In such circumstances it was unnecessary to go through the idle form of articulating the

obvious. If timely objection upon the ground ultimately suggested by the supreme court had been sustained, it could have been easily obviated; but counsel had no reason to anticipate such a ruling, and certainly, we think, were not required to do so at their peril.

Plaintiff in error has been improperly deprived of a Federal right."

---

**Federal Employers' Liability Act—Independent Contractor—C., R. I. & P. R. R. v. Bond, 36 Sup. Ct. Rep. 403.**—The Supreme Court of the United States held that control over results only, which is inconsistent with the existence of any relation of master and servant to which the Federal Employers' Liability Act, 1908, could apply, is what was reserved to an interstate railway carrier in a contract with a person called the original contractor, by which he is to handle at the railway company's coal chutes the coal required for its engines, furnishing the necessary labor for that purpose, is to break the coal in suitable sizes, is to unload wood from car to storage piles, and is to load cinders on cars and unload sand, where the manner of the work is under his control, to be done by him and his employees, and he is made responsible for the faithful performance of his agreement, incurring the penalty of instant termination of the contract for non-performance, the contract providing for payment on the basis of tons, cords or yards, and the "contractor" expressly assuming all liability for injuries to himself or to his property, or to his employees or third persons, and there being an explicit provision that the carrier "reserves and holds no control over him in the doing of such work other than as to the results to be accomplished."

---

**Taxation—Injunction—Adequate Remedy at Law—Recovery of Taxes Paid—City Council of Augusta v. Timmerman, et als., U. S. C. C. A. May 2, 1916.**—In the principal case the court laid down the following three principles:

1. The general rule is that courts will not interfere by injunction with the collection of the public revenue on the ground that a tax is illegal unless it clearly appears that the complainant has no adequate legal remedy.

2. A statutory provision for the payment of taxes under protest and a legal action to recover them back, affords an adequate legal remedy. Dows *v.* Chicago, 11 Wall. 108; Boise Water Co. *v.* Boise City, 213 U. S. 276; Dalton Adding Machine Co. *v.* State Corp. Com'rs. of Va., 236 U. S. 699; Dodge *v.* Osborn, U. S. Sup. Ct. Feb. 21, 1916.

3. It is no objection to the adequacy of the remedy that the statute provides that the action shall be brought in the state court, and that the remedy provided shall be exclusive. When a state confers